

House No. 4841

Message from His Excellency the Governor recommending legislation relative to making appropriations for the fiscal year 2011 to provide for supplementing certain existing appropriations and for certain other activities and projects.

The Commonwealth of Massachusetts



EXECUTIVE DEPARTMENT
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DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR

6/30/2010

To the Honorable Senate and House of Representatives:

I am filing for your consideration a bill entitled “An Act Making Appropriations for the Fiscal Year 2011 to Provide for Supplementing Certain Existing Appropriations and for Certain Other Activities and Projects.”

Continuing my Administration’s commitment to public safety, I am proposing to preserve funding for the Department of Corrections and the Massachusetts State Police. I am proposing to restore \$13 million for the DOC. Additionally, I am calling on the Legislature to pass sentencing reform legislation currently pending before a conference committee that is expected to result in approximately \$6 million in savings. Together, the additional funding and reforms are necessary to prevent prison closings and increased levels of overcrowding.

In addition, I am re-filing my proposed energy management reform, which is expected to generate at least \$6 million in savings next year. My original budget recommendation for Fiscal Year 2011 proposed the nation’s first comprehensive energy procurement and management system open to all public entities. This proposal will provide significant energy savings for state agencies, higher education campuses, quasi-public authorities, and others.

I am also proposing to restore approximately \$6 million for the State Police. The additional funds will prevent the elimination of special police units including gang and drug-related teams, critical to protecting our children and families across the Commonwealth.

I am also proposing language to allow the Department of Workforce Development to carry over unexpended Workforce Training funds from Fiscal Year 2010 that have not yet been committed. This will result in \$21 million of available funding in Workforce Training Grants for Fiscal Year 2011.

Based on the actions I am taking today in signing the Fiscal Year 2011 budget, sufficient revenues are estimated to be available to finance these appropriations. I urge your prompt and favorable consideration of this bill.

Sincerely,

DEVAL L. PATRICK,

Governor.

The Commonwealth of Massachusetts

In the Year Two Thousand and Ten

AN ACT MAKING APPROPRIATIONS FOR THE FISCAL YEAR 2011 TO PROVIDE FOR SUPPLEMENTING CERTAIN EXISTING APPROPRIATIONS AND FOR CERTAIN OTHER ACTIVITIES AND PROJECTS.

Whereas, The deferred operation of this act would tend to defeat its purposes, which are forthwith to make supplemental appropriations for fiscal year 2011 and to make certain changes in law, each of which is immediately necessary to carry out those appropriations or to accomplish other important public purposes, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

To provide for supplementing certain items in the general appropriation act and other appropriation acts for fiscal year 2011, the sums set forth in section 2 are hereby appropriated from the General Fund unless specifically designated otherwise in this act or in those appropriation acts, for the several purposes and subject to the conditions specified in this act or in those appropriation acts, and subject to the laws regulating the disbursement of public funds for the fiscal year ending June 30, 2011. These sums shall be in addition to any amounts previously appropriated and made available for the purposes of those items.

SECTION 2.

EXECUTIVE OFFICE OF PUBLIC SAFETY AND SECURITY

State Police

8100-0000.....\$3,500,000

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Department of Corrections

8900-0001.....\$10,000,000

DOER Energy Procurement.

SECTION 3. (A) Section 2 of chapter 25A of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out the second paragraph and inserting in place thereof the following paragraph:-

There shall be within the department 4 divisions: (i) a division of energy efficiency, which shall work with the department of public utilities regarding energy efficiency programs; (ii) a division of renewable and alternative energy development, which shall oversee and coordinate activities that seek to maximize the installation of renewable and alternative energy generating sources that will provide benefits to ratepayers, advance the production and use of biofuels and other alternative fuels as the division may define by regulation, and administer the renewable portfolio standard and the alternative portfolio standard; (iii) a division of aggregated energy procurement, which shall promote and advance the commonwealth's public interests by acting to reduce energy costs and greenhouse gas emissions for all state agencies; and (iv) a division of green communities, which shall serve as the principal point of contact for municipalities and other governmental bodies concerning all matters under the jurisdiction of the department of energy resources. Each division shall be headed by a director who shall be appointed by the commissioner and who shall be a person of skill and experience in the field of energy efficiency, renewable energy or alternative energy, energy purchasing and procurement, and energy regulation or policy, respectively. The directors shall be the executive and administrative heads of their respective divisions

and shall be responsible for administering and enforcing the law relative to such division and to each administrative unit thereof under the supervision, direction and control of the commissioner. The directors shall serve at the pleasure of the commissioner, shall receive such salary as may be determined by law and shall devote full time during business hours to the duties of the office. In the case of an absence or vacancy in the office of the director, or in the case of disability as determined by the commissioner, the commissioner may designate an acting director to serve as director until the vacancy is filled or the absence or disability ceases. The acting director shall have all the powers and duties of the director and shall have similar qualifications as the director.

(B) Section 3 of said chapter 25A, as so appearing, is hereby amended by inserting after the definition of "Energy conservation" the following definition:-

"Energy resources", electricity, natural gas, heating fuels, transportation fuels, demand response, efficiency, and energy management services;

(C) Said section 3 of said chapter 25A, as so appearing, is hereby amended by inserting after the definition of "State agency" the following definition:-

"State energy resource contracts", contracts executed by the division under section 11C1/2.

(D). Said chapter 25A is hereby further amended by inserting after section 11C the following section:-

Section 11C1/2. (a) (1) The division of aggregated energy procurement shall promote and advance the commonwealth's public interests by acting as the lead agency, in collaboration with the Massachusetts clean energy technology center, the executive office of energy and environmental affairs and the executive office for

administration and finance to reduce energy costs and greenhouse gas emissions for all state agencies by: (i) establishing a statewide procurement process for energy resources; (ii) managing a statewide energy monitoring and analysis system to optimize energy usage in state-owned facilities; and (iii) recommending energy-related capital investments.

(2) The division shall manage these duties so as to obtain adequate, reliable, efficient, environmentally-sustainable and cost-effective energy resources.

(b) (1) The division of aggregated energy procurement shall promote and advance the commonwealth's public interests by acting as the lead agency, in collaboration with the Massachusetts clean energy technology center, the executive office of energy and environmental affairs and the executive office for administration and finance to reduce energy costs and greenhouse gas emissions for all state agencies by: (i) establishing a statewide procurement process for energy resources; (ii) managing a statewide energy monitoring and analysis system to optimize energy usage in state-owned facilities; and (iii) recommending energy-related capital investments.

(2) The division shall manage these duties so as to obtain adequate, reliable, efficient, environmentally-sustainable and cost-effective energy resources.

(c) There shall be an advisory committee consisting of 9 individuals with an interest in and knowledge of matters related to energy procurement. The division shall consult with the advisory committee in matters related to the division and in the implementation of this section. The advisory committee shall develop objectives and procurement strategies and recommend financial controls. The advisory committee shall develop objectives and procurement strategies and recommend financial controls. The advisory

committee shall include the secretary of administration and finance who shall serve as chair, the secretary of energy and environmental affairs, the executive director of the Massachusetts clean energy technology center, the state purchasing agent , 1 member to be appointed by the secretary of energy and environmental affairs who shall be an expert on energy management services and 4 members to be appointed by the secretary of administration and finance, 1 of whom shall be from a participating executive branch agency, 1 of whom shall represent quasi-public entities, 1 of whom shall represent participating state authorities and 1 of whom shall be an expert on energy procurement. The members of the advisory committee shall serve without compensation, but shall be reimbursed for actual and necessary expenses incurred in the performance of their official duties. The advisory committee shall meet at least quarterly and at such other times as the members shall decide. A member may appoint a designee to represent that member at any such meeting.

(d) State agencies shall procure energy resources through state energy resource contracts negotiated by the division and executed subject to this section unless granted a waiver by the division. Local governmental bodies may procure energy resources through state energy resource contracts by notifying the division in writing.

Notwithstanding this subsection, a state agency or local governmental body served by a municipal lighting plant which does not supply generation service outside its own service territory or does not open its service territory to competition at the retail level shall not procure energy resources from state energy resource contracts.

(e) The division, in consultation with the advisory committee, shall establish procedures and criteria to enable a state agency, in consultation with the division, to

105 evaluate the costs and benefits of any then-current contractual obligations for energy
106 resources applicable to that state agency. Following the termination date of these
107 contracts, the state agency shall procure energy through state energy resource
108 contracts unless granted a waiver by the division. The division may waive the
109 requirements of this subsection if, after consultation with any applicable governing body
110 of the state agency, the division concludes that the costs and benefits of maintaining
111 separate procurement contracts for the state agency achieves the best value or is in the
112 best interests of the entity. If a state agency that: (1) has been accepted by the Federal
113 Energy Regulatory Commission under the Federal Power Act as an energy wholesale
114 electric customer for power supply and transmission; (2) engages in sales for resale
115 under the Federal Power Act; owns, operates and maintains an electricity transmission
116 and distribution (including voltage step-down capacity); (3) is subject to enforceable
117 grant assurances under a federal funding program, which requires it to operate its
118 federally assisted facility or facilities on as financially self-sustaining basis as is feasible;
119 and (4) whose primary operating facilities are subject to federal regulation and federal
120 licensure or certification can demonstrate, along with the presentation before the board
121 by the division of a report on savings under the state energy resource contract, to its
122 board or applicable governing body a measurable savings through a separate
123 procurement which is greater than any savings that would be realized through use of a
124 state energy resource contract under this section, shall be granted a waiver by the
125 division. If the division grants a waiver, the state agency may conduct separate
126 procurements for energy resources subject to all applicable procurement laws,
127 regulations and policies. A state agency or local governmental body procuring energy

resources through a state energy resource contract shall execute all necessary contract documents to complete the procurement.

(f) To increase efficiencies in conducting energy resource procurements for state agencies and local governmental bodies, the division shall:

(i) establish a transparent, open, and competitive statewide procurement process for energy resources for such agencies and bodies at the lowest reasonable cost, but in no instance shall the division procure more than 25 per cent of the electrical energy load of the commonwealth from a single electrical energy generation source; and

(ii) manage all eligible state accounts and, at the discretion of the division, accounts from participating local governmental bodies, by consolidating the supply portion of service into a single electricity and natural gas commodity load profile, respectively.

(g) To streamline energy billing for state agencies and local governmental bodies which have executed contracts under this section, the division, in consultation with the executive office for administration and finance and participating state agencies and local governmental bodies, may create a centralized billing system to receive all utility bills, audit for errors and provide billing to individual state agencies and accounts.

Participating state agencies and local governmental bodies shall provide the division with such billing information, as it may request.

(h)(1) To improve energy usage and management for state agencies and achieve state energy policy objectives, the division may:

(i) utilize an energy management system to monitor and analyze the consumption of energy procured through state energy resource contracts in facilities used by state agencies;

(ii) analyze data from the energy management system, energy audits and other sources to identify energy-efficiency investment opportunities;

(iii) identify all existing state-owned energy generation assets and develop a plan to optimize their value; and

(iv) establish equitable means to distribute energy savings to state agencies.

(2) The division may develop a similar energy usage and management program for participating local governmental bodies and may utilize the systems and methods set forth in this subsection in consultation with the green communities division.

(i) To identify appropriate capital investments in the state facility energy infrastructure, the division, in consultation with the executive office for administration and finance, may develop recommendations that:

(1) establish economic criteria to be applied in making capital investments in identified energy efficiency opportunities;

(2) identify capital resources, either through existing bonding authority or other sureties or resources to fund energy-efficiency improvements and distributed-energy generation; and

(3) utilize energy cost-savings to finance, in whole or in part, such capital improvements.

(j) Nothing in this section shall change the relevant terms of existing distribution company tariffs with respect to the provision of distribution services to individually metered accounts.

(k) The division shall report annually on January 1 to the clerks of the senate and house of representatives, the governor and the participating state agencies and local

governmental bodies on the operations of the division. The annual report shall include, but not be limited to, a description of the performance of the procurement program and contracts executed under this section, with specific reference to the advisability of the exclusion of any authority under subsection (e) and whether the exclusion of any authority substantially impacts any savings under this section.

(l) The division shall adopt regulations and procedures to carry out this section.

(E) Section 2B of the general appropriation act for fiscal year 2011 is hereby amended by inserting after item 1102-3224 the following item:-

1102-3225...For the cost of utilities and management services provided by the division of capital asset management, including the payment of electric fuel oil and natural gas purchases that are centrally billed to the commonwealth and the purchase, delivery, handling of and contracting for supplies, postage and related equipment and other incidental expenses provided under section 51 of chapter 30 of the General Laws; provided, that any unspent balance at the close of fiscal year 2011 in an amount not to exceed 5 per cent of the amount authorized shall remain in the Intergovernmental Service Fund and may be expended for this item in fiscal year 2012 for the purposes of energy efficiency projects; and provided further, that the division in consultation with the department of energy resources, the operational services division and the executive office for administration and finance shall implement a program for centralized energy management by July 1, 2011.....\$255,500,000

Intragovernmental Service Fund 100%.

(F) The first annual report required under subsection (k) of section 11C1/2 of chapter 25A of the General Laws shall be filed not later than January 1, 2012. The rules and procedures

required under subsection (l) of said section 11C1/2 of said chapter 25A shall be filed not later than December 1, 2010.

Workforce Training PAC

SECTION 4. Item 7003-0701 of section 2 of chapter 27 of the acts of 2009 is hereby amended by adding the following words:- ; and provided further, that any unexpended funds in this item shall not revert and shall be made available for the purposes under this item until June 30, 2011.

State Police PAC

SECTION 5. Item 8100-0000 of said section 2 of said chapter 27 is hereby amended by adding the following words:- ; and provided further, that any unexpended funds in this item shall not revert and shall be made available for the purposes under this item until June 30, 2011.

Department of Correction PAC

SECTION 6. Item 8900-0001 of said section 2 of said chapter 27 is hereby amended by adding the following words:- ; and provided further, that any unexpended funds in this item shall not revert and shall be made available for the purposes under this item until June 30, 2011.

Administration and Finance Technical

SECTION 7. Item 1100-1100 of section 2 of the general appropriation act for fiscal year 2011 is hereby amended by striking out the words “and the administration of the fiscal affairs division”.

Infrastructure Financing

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SECTION 8. Said section 2 of the general appropriation act for fiscal year 2011 is hereby amended by striking out item 1599-1977 and inserting in place thereof the following item:-

1599-1977 For contract assistance and other payments to the Massachusetts development finance agency for payment of debt service and related obligations in connection with bonds issued by the agency under chapter 293 of the acts of 2006, as amended by chapter 129 of the acts of 2008, and under chapter 303 of the acts of 2008
.....\$ 1,393,338

SANE Retained Revenue

SECTION 9. Section 2 of the general appropriation act for fiscal year 2011 is hereby amended by inserting after item 4510-0810 the following item:-

4510-0811 The department of public health may expend not more than \$1,000,000 from contributions and other revenue derived from public and private sources for the statewide sexual assault nurse examiner program and pediatric sexual assault nurse examiner program for the care of victims of sexual assault.....\$1,000,000

Department of Children and Families Appropriations

SECTION 10. Item 4800-0030 of section 2 of the general appropriation act for fiscal year 2011 is hereby amended by striking out the language and inserting in place thereof the following language:- For the continuation of local and regional administration and coordination of services; provided, that flex services mandated by this item shall be funded from this item.

Library Closings

238 SECTION 11. (A) Item 7000-9401 of section 2 of the general appropriation act for fiscal
239 year 2011 is hereby amended by striking out the words “said section 19C of said chapter 78 shall
240 not apply to a municipality with more than 150,000 residents during fiscal year 2011 unless” and
241 inserting in place thereof the following words:- to a municipality of more than 150,000 residents,
242 funds under this item shall be provided proportionately according to the proportion of fiscal year
243 2011 during which.

244 (B) Item 7006-0140 of section 2 of the general appropriation act for fiscal year 2011 is
245 hereby amended by striking out the words “said section 19C of said chapter 78 shall not apply to
246 a municipality with more than 150,000 residents during fiscal year 2011 unless” and inserting in
247 place thereof the following words:- to a municipality of more than 150,000 residents, funds
248 under this item shall be provided proportionately according to the proportion of fiscal year 2011
249 during which.

250 GAA Fund-split Amendments

251 SECTION 12. (A) Item 0699-0015 of section 2 of the general appropriation act for fiscal
252 year 2011 is hereby amended by adding the following words:-

253 General Fund..... 52.00%

254 Commonwealth Transportation Fund 48.00%

255 (B) Item 2310-0200 of said section 2 of the general appropriation act for fiscal year 2011 is
256 hereby amended by adding the following words:-

257 Inland Fisheries and Game Fund 100%

258 (C) Item 4512-0200 of said section 2 of the general appropriation act for fiscal year 2011 is
259 hereby amended by adding the following words:-

260 Substance Abuse Prevention and Treatment Fund.....100%

261 (D) Item 4512-0201 of said section 2 of the general appropriation act for fiscal year 2011 is
262 hereby amended by adding the following words:-

263 Substance Abuse Prevention and Treatment Fund.....100%

264 (E) Item 4512-0202 of said section 2 of the general appropriation act for fiscal year 2011 is
265 hereby amended by adding the following words:-

266 Substance Abuse Prevention and Treatment Fund.....100%

267 (F) Item 4512-0203 of said section 2 of the general appropriation act for fiscal year 2011 is
268 hereby amended by adding the following words:-

269 Substance Abuse Prevention and Treatment Fund.....100%

270 (G) Item 4590-0250 of said section 2 of the general appropriation act for fiscal year 2011 is
271 hereby amended by adding the following words:-

272 Substance Abuse Prevention and Treatment Fund.....100%

273 (H) Item 4590-0300 of said section 2 of the general appropriation act for fiscal year 2011 is
274 hereby amended by adding the following words:-

275 Substance Abuse Prevention and Treatment Fund.....100%

276 (I) Item 7007-0900 of said section 2 of the general appropriation act for fiscal year 2011 is
277 hereby amended by adding the following words:-

278 Massachusetts Tourism Fund 100%

279 (J) Item 7007-0901 of said section 2 of the general appropriation act for fiscal year 2011 is
280 hereby amended by adding the following words:-

281 Massachusetts Tourism Fund 100%

282 (K) Item 7007-1000 of said section 2 of the general appropriation act for fiscal year 2011 is
283 hereby amended by adding the following words:-

284 Massachusetts Tourism Fund 100%

285 (L) Item 8900-0002 of said section 2 of the general appropriation act for fiscal year 2011 is
286 hereby amended by adding the following words:-

287 Substance Abuse Prevention and Treatment Fund.....100%

288 (M) Item 8900-0006 of said section 2 of the general appropriation act for fiscal year 2011 is
289 hereby amended by adding the following words:-

290 Substance Abuse Prevention and Treatment Fund.....100%

291 Single Audit Chargeback

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293 SECTION 13. Item 1000-0005 of section 2B of the general appropriation act for fiscal year
294 2011 is hereby amended by striking the figure “\$750,000” and inserting in place thereof the
295 following figure:- \$850,000

Medical Assistance Trust Fund

SECTION 14. Section 2E of the general appropriation act for fiscal year 2011 is hereby amended by striking out Item 1595-1068 and inserting in place thereof the following item:-:

1595-1068 Notwithstanding the preamble in section 2E, this item shall be for an operating transfer to the MassHealth provider payment account in the Medical Assistance Trust Fund, established under section 2QQQ of chapter 29 of the General Laws; provided, that these funds may be expended only for services provided during state or federal fiscal year 2011, and no amounts previously or subsequently transferred into the Medical Assistance Trust Fund may be expended on payments described in the section 1115 demonstration waiver for services provided during state fiscal year 2011, or payments described in the state plan for services provided during federal fiscal year 2011; provided further, that all payments from the Medical Assistance Trust Fund shall be subject to the availability of federal financial participation, shall be made only in accordance with federally approved payment methods, shall be consistent with federal funding requirements and all federal payment limits as determined by the secretary of health and human services and shall be subject to the terms and conditions of an agreement with the executive office of health and human services; provided further, that any increase in payment made from the trust fund totaling an amount greater than \$251,000,000 in fiscal year 2011 shall be made only after the secretary of health and human services certifies that any

increase in payments from the trust fund shall not exceed the negotiated limit for section 1115 waiver spending; provided further, that the secretary of health and human services shall notify, in writing, the house and senate committees on ways and means and the joint committee on health care financing of any increases in payments within 15 days; and provided further, that the secretary of health and human services shall make a payment of up to \$247,605,130 from the Medical Assistance Trust Fund to the Cambridge Public Health Commission for dates of service in state and federal fiscal year 2011, only after the Cambridge Public Health Commission transfers up to \$95,105,130 of its funds to the Medical Assistance Trust Fund using a federally permissible source of funds which shall fully satisfy the nonfederal share of such payment..... \$392,500,000

Amend Trial Court Transferability

SECTION 15. The first sentence of section 181 of the general appropriation act for fiscal year 2011 is hereby amended by striking out the words “; provided, however, that the chief justice for administration and management may transfer not more than 5 per cent of funds from each of the items 0339-1001, 0339-1003, 0339-1007 and 0339-1009 to any other item of appropriation within the trial court”.